IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Civil Writ Petition No.19224 of 2006

The Hindu Urban Cooperative Bank Limited ....Petitioner

Versus

The State Information Commission and others ...Respondents

2. Civil Writ Petition No.19481 of 2006

The Punjab State Cooperative Bank Limited ...Petitioner

Versus

The State Information Commission and others ...Respondents

3. Civil Writ Petition No.1835 of 2007

The Zenith Cooperative House Building Society Ltd., Ludhiana ...Petitioner

Versus

The State Information Commission and others ...Respondents

4. Civil Writ Petition No.4790 of 2007

The Haryana State Cooperative Agricultural and Rural Development Bank Limited ....Petitioner

Versus

The State Information Commission and others ...Respondents

5. Civil Writ Petition Nos.17732 to 17735 of 2009

Bhogpur Cooperative Sugar Mills Ltd., Bhogpur ....Petitioner

Versus

The State Information Commission and others ...Respondents

6. Civil Writ Petition No.20690 of 2010

Sirsa District Coop. Milk Producers Union Limited ....Petitioner

Versus

The State Information Commission and others ...Respondents

7. Civil Writ Petition No.21361 of 2010

The Pancham Cooperative House Building Society Limited ....Petitioner

Versus

The State Information Commission and others ...Respondents

8. Civil Writ Petition No.4023 of 2011

The Jhajjar Central Cooperative Bank Limited ....Petitioner

Versus

The State Information Commission and others ...Respondents

9.Civil Writ Petition Nos.11359 to 11361, 11364, 11366, 11369 & 11370 of 2010

Gita Girls Senior Secondary School, Amin Marg, Kurukshetra ....Petitioner

Versus

State Information Commission, Haryana and another ...Respondents

10. Civil Writ Petition No.2494 of 2011

Model School, Rohtak ....Petitioner

Versus

State Information Commission, Haryana and another ...Respondents

11. Civil Writ Petition No.3920 of 2011

Saini Education Society, Rohtak ....Petitioner

Versus

State Information Commission, Haryana and others ...Respondents

12. Civil Writ Petition No.16086 of 2008

Punjab Cricket Association, SAS Nagar (Mohali) ....Petitioner

Versus

State Information Commission, Punjab and another ...Respondents

13. Civil Writ Petition No.17972 of 2009

Jullundur Gymkhana ...Petitioner

Versus

State Information Commission and another ...Respondents

14. Civil Writ Petition No.10876 of 2010

Chandigarh Lawn Tennis Association (CLTA) ....Petitioner

Versus

Central Information Commissioner and another ...Respondents

15. Civil Writ Petition No.16750 of 2010

The Sutlej Club ....Petitioner

Versus

State Information Commission and another ...Respondents

Date of Decision:- **9.5.2011**

CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- S/Shri M.L.Sarin & D.V.Sharma, Senior Advocates with S/Shri Anil Kshetarpal, Kanwalvir Singh Kang, Karambir Singh Chawla, Baldev Raj Mahajan, Inderpal Singh, Ashwani Bakshi, Harit Sharma, Satnam Singh Gill, Sanjiv Gupta, Subhash Ahuja and Rahul Sharma, Advocates for the petitioners.

Mr.Sartaj Singh Gill, DAG, Punjab, Mr.Narender Singh, DAG, Haryana and S/Shri H.C.Arora, Hari Om Attri, S.S.Chhokar, G.S.Ghuman L.M.Gulati, Davinder Kaushal, Sandeep Kumar Sharma, Parmod Kumar and Mr.John Kumar, Advocates for the respondents.

Complainant Chander Bhan Saini, respondent No.4 in person in CWP No.3920 of 2011.

Mehinder Singh Sullar, J.

As strange as it may seem, but strictly speaking, the tendency and frequency, of some of the Institutions, of not supplying and taking somersault in denying the informations, have been tremendously increasing day by day, leaving the public at large in general and the information seekers in particular, in lurch to

damage the edifice of the democracy and larger public interest. The matter in hand is a burning example of such like cases.

2. As identical questions of law and facts are involved and collectively argued by learned counsel for the parties, therefore, I propose to dispose of the instant writ petitions, by virtue of this common judgment, in order to avoid the repetition in this regard. Be that as it may, the facts of individual institutions, which need a necessary mention, for deciding the core controversy, involved in the instant writ petitions, would be separately discussed at the appropriate place and stage in the subsequent part of this judgment.

3. The matrix of the facts, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, is that the different information-seekers-private respondent-complainants (for brevity "complainants") moved their respective applications, in all the cases, to the concerned State Public Information-Officers (in short "SPIOs") of the petitioner-Cooperative Societies-banks-Sugar Mills-aided schools-Clubs-Institutions (for short "petitioner-Institutions") and sought the informations depicting therein, invoking the provisions of The Right to Information Act, 2005(hereinafter to be referred as "the RTI Act"). The petitioners-Cooperative Societies, banks & Sugar Mills (at Sr.Nos.1 to 8) are registered and governed by the provisions of The Punjab/Haryana Cooperative Societies Acts (hereinafter to be referred as "the Cooperative Societies Acts"). Similarly, the petitioners-Gita Girls schools (at Sr.No.9) are also subjected to the provisions of The Haryana Education Act, 1995 (hereinafter to be referred as "the Education Act") and Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 (hereinafter to be referred as "the Rules"). The petitioners-Model School, Saini Education Society, Punjab Cricket Association (for brevity "PCA"), Chandigarh Lawn Tennis Association (in short "CLTA"), Jullundar Gymkhana and Sutlej Club (at Sr.Nos.10 to 15) are regulated by the provisions of The Societies Registration Act, 1860 as

well.

4. The complainants claimed that the requisite informations were not supplied to them by the SPIOs of the petitioner-Institutions, mainly on the ground that, since they do not fall within the ambit of public authorities, so, the provisions of the RTI Act are not applicable to them and they are not legally obliged to supply the informations. Dissatisfied with the conduct of the SPIOs, some of the complainants filed the first appeals before the first appellate authority, but in vain and the informations were still not supplied to them by the petitioner-institutions on the same ground.

5. Aggrieved by the actions of the petitioner-Institutions, the complainants filed the second appeals before the State Information Commissions, Punjab & Haryana (in short "SIC"), inter-alia on the ground that as the provisions of the RTI Act are fully applicable, therefore, they were liable to supply the indicated informations to them. The petitioner-Institutions contested the claim of the complainants and reiterated their previous stand of non-application of the provisions of RTI Act to them in this context.

6. Taking into focus the control of the State Governments under the above mentioned Acts and Rules and the direct or indirect funds provided by the appropriate Governments to them, the SIC came to the conclusion that the provisions of RTI Act are applicable to the petitioner-Institutions and they are legally bound to provide the projected informations and accepted the appeals of the complainants, by means of respective impugned orders in this behalf.

7. The petitioner-Institutions did not feel satisfied and preferred the present writ petitions, challenging the impugned orders of SIC, invoking the provisions of Articles 226 and 227 of the Constitution of India, inter-alia again pleading their main earlier stand of non-application of provisions of RTI Act to their organizations.

8. The complainants contested the pleas of the petitioner-Institutions

and filed their respective written statements. The case set up by the complainants, in brief in so far as relevant, was that since the petitioner-Institutions are governed, controlled & established under the aforementioned Acts/Rules, directly or indirectly financed by the State and they are dealing with the public at large, so, they are bound to supply the informations sought by them. It will not be out of place to mention here that the complainants have stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal. That is how I am seized of the matter.

9. Assailing the impugned orders of the SIC, learned counsel for petitioner-Institutions, contended with some amount of vehemence that the petitioner-Institutions are independent bodies. As they are not established by any law made by the Parliament/State Legislature or by issuance of any notification nor they are owned, controlled or substantially financed by the Governments, therefore, they do not fall within the definition of Public Authorities as defined under section 2(h) of the RTI Act. The argument further proceeds that since the provisions of the RTI Act are not applicable to them, so, they are not liable to supply the informations in question to the complainants. Hence, they prayed for acceptance of their writ petitions.

10. In support of the arguments, the learned counsel for petitioner-Institutions have placed reliance on the judgments of Hon'ble Apex Court in case S.S.Rana v. Registrar, Cooperative Societies & Anr. **JT 2006 (5) SC 186;** of this Court in case Pritam Singh Gill v. State of Punjab and others ***AIR 1982 Punjab and Haryana 228***; Kartnataka High Court in cases S.S.Angadi v. State Chief Information Commissioner, Bangalore and another **2009 (5) RCR (Civil) 312**; Dattaprasad Co.op. Housing Society Ltd. v. Karnataka State Chief Information Commissioner and another, **2009 (5) RCR (Civil) 833;** Bidar District Central Co-operative Bank Ltd., Bidar v. Karnataka Information Commission, Bangalore and another **2009(5) RCR (Civil) 394;** Bombay High Court in cases Dr.Panjabrao

Deshmukh Urban Cooperative Bank Ltd. v. The State Information Commissioner, Vidarbha Region Nagpur & Ors. **AIR 2009 Bombay 75;** Bhaskarrao Shankarrao Kulkarni v. State Information Commissioner, Nagpur & Ors. **AIR 2009 Bombay 163** and Nagar Yuwak Shikshan Sanstha, Wanadongri, Nagpur v. Maharashtra State Information Commission, Vidarbha Region, Nagpur **2009 (6) AIR (Bombay) 11.**

11. On the contrary and hailing the impugned orders, learned counsel appearing on behalf of the respondents pithily urged that the petitioner-Institutions are registered under, governed, controlled and regulated by the provisions of the relevant Acts/Rules, also directly or indirectly financed by the State Government and are dealing with the public at large. Therefore, they fall within the scope of RTI Act and are liable to supply the informations to the complainants. They have also relied on the judgments of this Court rendered in CWP No.17686 of 2009 titled as "The Karnal Cooperative Sugar Mills Limited and others v. State Information Commissioner, Haryana, Chandigarh and Another, decided on 18.11.2009, affirmed by the first Division (LPA) Bench in LPA No.122 of 2010, by way of judgment dated 8.9.2010; judgment of Delhi High Court in WP (C) No.876 of 2007 titled as "Indian Olympic Association v. Veeresh Malik & Ors." decided on 7.1.2010; Kerala High Court in case Thalapalam Service Cooperative Bank Ltd. v. Union of India & Others **2010 (1) I.D. 83,** the Allahabad High Court in case Dhara Singh Girls High School, Ghaziabad v. State of Uttar Pradesh & Ors. **2008 (4) Civil Court Cases 352 (Allahabad);** Division Bench of this Court in cases D.A.V.College Trust and Management Society and others v. Director of Public Instructions (Colleges), U.T., Chandigarh and others **2008(2) S.C.T. 543;** Principal, M.D.Sanatan Dharam Girls College, Ambala City v. State Information Commissioner, Haryana **2008(2) Law Herald (P&H) (DB) 1214.**

12. Having heard the learned counsel for the parties at quite some length, having gone through the records and legal provisions with their valuable assistance

and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant writ petitions in this context.

13. What cannot possibly be denied that we, the people of India have constituted ourselves into a democratic and Republic Nation and are governed by the Constitution of India. India is the largest democracy in the world. The democracy requires an informed citizenry and transparency of information that are vital to its functioning. Availability of information necessary to curb the menace of corruption, which has already peeped in and is eating the civil society like parasite. The instrumentalities/authorities which meddle with public funds or with the interest of the citizens and are governed by Acts of Central or State Governments as the case may be, are required to be made accountable. In practical life, imparting of information is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. It was felt necessary to harmonize these conflicting interests while preserving the paramount status of the democratic system of the society. In order to achieve the required goal of larger public interest, the RTI Act was enacted and the object sought to be achieved is to provide for setting out the practical regime of right to information for citizens to secure access to information. The purpose of the Act is to promote transparency and accountability in the working of every public authority. The RTI Act is a mode of access to information. What may come out ultimately could be the assurance that all is well; that ends well or should be shocking revelations which may call for appropriate action at appropriate time. Therefore, the right of access to information are species of fundamental rights referable to the freedom of speech, enumerated in the Constitution as a fundamental right. Although the implementation of the fundamental right does not require any legislation, but still RTI Act covers this regime with certain restrictions depicted therein.

14. Exhibiting the deep concern, the Hon'ble Supreme Court in cases

People's Union for Civil Liberties v. Union of India **2003 (4) SCC 399**; State of U.P. v. Raj Narain **1975 (4) SCC 428** and S.P.Gupta v. Union of India **(1981) Suppl. SCC 87** has interpreted the democratic Republic and fundamental rights enshrined in part III of the Constitution and projected the significance of the right to know, which is derived from the concept of freedom of speech, though not absolute. It was observed that the people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a) of the Constitution. Therefore, it was explained that disclosure of information in regard to the functioning of Government must be the rule and secrecy is an exception. At the same time, it was noticed that in the modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government and other public relations, which, have been elected/established by them, seeks to formulate sound policies of governance aimed at their welfare.

15. Sequelly, no one can lose sight of the fact that the RTI Act is a public statute, serves the larger public interest and public policy. The preamble, basic purpose, aims and objects of this Act, have to be kept into focus, while deciding the very controversy raised in the writ petitions. It is not a matter of dispute that the RTI Act was enacted in order to ensure transparency in the system, smoother and deep access to information and to provide an effective framework for effecting the right to information, recognized under Article 19 of the Constitution of India and to strengthen the concept of transparency and accountability in the system.

16. Likewise, it is now well settled principle of law that it is obligatory on the part of the Court to find out the intention of the Legislature from the words used in the statute by giving them the natural and ordinary meaning and the provisions of a statute have to be interpreted in the same manner as mandate and

commanded by it and not otherwise, in order to achieve the larger public interest.

17. Having so described and keeping in view the crux of the constitutional scheme and the RTI Act, to me, it would be appropriate at this stage to notice the law relied on behalf of petitioner-Institutions in this regard. In S.S.Rana's case (supra), the petitioner-workman was working as a Branch Manager in the Kangra Central Cooperative Bank Ltd.. The disciplinary proceeding was initiated against him, purporting to be in terms of Rule 56(b) of the said Act. The Managing Director of the society terminated his services. His appeal was dismissed by the Board of Directors. The writ petition filed by him was dismissed as well, by the High Court. It was ruled that the society has not been constituted under an Act. Its functions like any other Cooperative Society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the society. Membership, acquisition of shares and all other matters are governed by the bye-laws. The terms and conditions of an officer of the Cooperative Society are governed by the rules. It was not shown that the State exercises any control over the affairs of the society for deep and pervasive control. For arriving at the conclusion that the State has a deep and pervasive control over the society, several other relevant questions are required to be considered, namely: (1) How the society was created?; (2) Whether it enjoys any monopoly character?; (3) Do the functions of the society partake to statutory functions or public functions? and (4) Can it be characterized as public authority? Therefore, on the peculiar facts and in the special circumstances of that case, it was observed that the writ petition against the society was not maintainable.

18. Likewise, in Pritam Singh Gill's case (supra) this Court held that mere fact that a society registered under the Punjab Cooperative Societies Act is not an instrumentality, agency and an authority of the State within the meaning of Article 12 of the Constitution and as such is not amenable to writ jurisdiction.

19. In the same sequence, in S.S.Angadi and Dattaprasad Coop. Housing

Society Ltd.'s cases (supra), it was noticed by the Karnataka High Court that since the respondent-society is not the creation of any other law made by the Legislature and is not body owned or controlled or substantially financed by the Government, so, it is not a public authority under the RTI Act.

20. Similarly, in Dr.Panjabrao's case (supra), relying upon the judgment in S.S.Rana's case (supra), it was observed by the Bombay High Court that the Cooperative Society registered under the Maharashtra Cooperative Societies Act, 1961 is not a public authority and the provisions of RTI Act are not applicable. In Bhaskarrao's case (supra), it was ruled that as the public trust is not created by Government or Parliament and not substantively financed by Government, therefore, it is not covered by definition of public authority and it would not be bound by provisions of RTI Act.

21. In the same manner, in Nagar Yuwak Shikshan Sanstha's case (supra), no material was brought on record to prove that the Engineering College run by public trust was financed substantially by the appropriate Government directly or indirectly and mere control over fees structure, admissions, new courses etc. would not come within the definition of public authority. On the peculiar facts and in the special circumstances of that case, it was observed that the Engineering College run by public trust will not fall within the purview of the RTI Act. The same view was reiterated by the Karnataka High Court in Bidar District Central Cooperative Bank Ltd.'s case (supra). I have carefully gone through and considered the proposition of law laid down in these judgments.

22. Possibly, no one can dispute with regard to the conspectus of the observations, in that context, in the aforesaid judgments, but, to my mind, the same would not come to the rescue of the petitioner-Institutions in order to determine the present real controversy. Moreover, with all due respects, I express my inability to accept the view taken by the Karnataka High Court in S.S.Angadi, Dattaprasad, Bidar District Central Cooperative Bank Ltd.'s cases (supra and the

Bombay High Court in Dr.Panjabrao, Bhaskarrao, Shankarrao and Nagar Yuwak's cases (supra), inter-alia for the reasons mentioned hereinbelow.

23. At the first instance, the view taken by the Karnataka and Bombay High Courts was not approved by this Court in CWP No.17686 of 2009 titled as "The Karnal Cooperative Sugar Mills Limited and others vs. State Information Commissioner, Haryana Chandigarh and Another" decided on 18.11.2009, which was affirmed by the first Division (LPA) Bench of this Court in LPA No.122 of 2010, decided on 8.9.2010, the operative part of which is as under:-

> *"Counsel for the appellants has relied upon a decision of the Hon'ble Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur UP vs Satrughan Nishad and others, (2003) 8 SCC 639, a decision of this Court in CWP No.6226 of 1992, Raj Pal and others vs Karnal Co-operative Sugar Mills Limited Karnal and others, decided on 11.11.1992, and a decision of the Karnataka High Court in Dattaprasad Co.op Housing Society Ltd v. Karnataka State Chief Information Commissioner, 2009(5) RCR (Civil) 833. As regards the first two decisions, they relate to the test of Article 12 of the Constitution. Thus, they are not at all relevant to determine the ambit of Section 2 of the Act where the phrase is `public authority' and not `State'. The third decision was in respect of a cooperative society which was entirely a private house building society. The allegation sought to be made was that since all cooperative societies were under the ultimate control of the Registrar Cooperative Societies, they would all be public authorities. There was no participation of the government in the said society. It was in those circumstances that the learned Single Judge held that the society was not amenable to the Right to Information Act, 2005.*
>
> *In our view, the present case is clearly distinguishable for the reason that here the appellant-Sugar Mill is managed by a Managing Director who is a State Civil Service Officer. As mentioned above, the appellants have divulged no information regarding the extent of financial help/investment/equity participation made by the government in the appellant-Mill. It is evident that this information if furnished may have gone against the appellants' stand. In the circumstances, no fault can be found with the judgment of the learned Single Judge and consequently, this appeal is dismissed with no order as to costs."*

24. Secondly, the conclusion arrived at in the judgments by the Bombay High Court is primarily based on the judgment of Hon'ble Apex Court in S.S.Rana's case (supra), which has dealt with the determination of the rights and liabilities of the parties therein, within the meaning of other authority/ instrumentality of the State as contemplated under Article 12 of the Constitution.

Moreover, the view of Karnataka and Bombay High Courts appears to have been taken as if the proprietary, monetary and substantive rights of the parties were to be determined under the RTI Act, in which, the preamble, very purpose, aims, objects and the larger public interest in enacting this Act, have been completely ignored in this behalf.

25. Above-all, the deep and pervasive control as required under Article 12, is not required and essential ingredient for invoking the provisions of RTI Act. The primary purpose of instrumentality of the State is in relation to enforcement of the fundamental rights through Courts, whereas the RTI Act is intended to achieve, access to information and to provide an effective framework for effecting the right to information recognized under Article 19 of the Constitution. The complainants are not claiming any kind of monetary benefits or property from the empire of the petitioner-institutions. To my mind, the enforcement of fundamental rights through Courts and the question of applicability of writ jurisdiction on an instrumentality of the State for the purpose of determination of substantive rights and liabilities of the parties are altogether (entirely) different than that of the field of RTI Act, only meant to impart the information. Hence, in my view, the ambit and scope of phrase of instrumentality of the State under Article 12 of the Constitution is entirely different and distinct than that of the regime of RTI Act. If the intention of the Legislature was to, so restrict the meaning to the expression of public authority, straightjacketing the same within the four corners of the State, as defined under Article 12, then there was no need/occasion to assign a specific broader definition of public authority under section 2(h) of RTI Act in this relevant connection. Therefore, to me, the view taken by the Karnataka and Bombay High Courts in the aforesaid judgments is not at all relevant to decide the real controversy between the parties in the instant writ petitions.

26. To my mind, in order to arrive at a right conclusion, the problem has to be approached to peep into the entire scheme of the RTI Act. Section 2(a)

defines "appropriate Government" to mean in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the Central Government or the Union territory administration and by the State Government.

27. Section 2(f) of the Act defines "information" to mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force and word "Record" includes--(i) any document, manuscript and file; (ii) any microfilm, microfiche and facsimile copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (iv) any other material produced by a computer or any other device.

28. Similarly, the dictionary meaning of "public" is relating to or concerning all the people of a country or community and the "authority" means the power of right to enforce, obedience, body having authority and having personal influence. However, the public authority has also been defined in section 2(h) as under:-

> *"public authority" means any authority or body or institution of self government established or constituted--*
> *(a) by or under the Constitution;*
> *(b) by any other law made by Parliament;*
> *(c) by any other law made by State Legislature;*
> *(d) by notification issued or order made by the appropriate Government, and includes any--*
> *(i) body owned, controlled or substantially financed;*
> *(ii) non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government."*

29. According to section 2(j), "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to--(i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records; (iii)

taking certified samples of material; and (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device. Likewise, section 2(n) defines "third party" means a person other than the citizen making a request for information and includes a public authority.

30. As is clear, section 3 mandates that subject to the provisions of this Act, all citizens shall have the right to information and obligations of public authorities to maintain all its record is listed in Section 4 of the Act. Sections 5 to 7 regulate the designation of Public Information Officers, request and method of disposal of such request for obtaining the information.

31. Likewise, section 8(1) of the Act deals with exemption from disclosure of the information.

Proviso to this section has the overriding effect that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

32. Sub-section (2) provides that notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

33. Sequelly, section 11 posits that where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information

Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information.

34. In the same sequence, section 24 escalates that nothing contained in this Act shall apply to the intelligence and security organizations specified in the Second Schedule, being organizations established by the Central Government or any information furnished by such organizations to that Government.

Again, the proviso to this section has the overriding effect that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section. That means, the RTI Act was formulated to proclaim and create a personal regime of right to information for citizens for a larger public interest in a democratic republic of the country.

35. Ex-facie the celebrated argument of learned counsel for petitioner-Institutions that only those authorities would come under the purview of pubic authority, established or constituted by the Government, which is owned, controlled or substantially financed directly or indirectly by the State and specifically established and constituted by notification issued by the appropriate Government, as sub-clauses (i) and (ii) of clause (d) of section 2(h) have to be collectively construed and cannot be read in isolation, is not only devoid of merit but misplaced as well in this behalf.

36. It cannot possibly be disputed that the definition of 'public authority' as envisaged under section 2(h) of the Act has to be construed harmoniously and sub-clauses (i) & (ii) of clause (d) of this section have to be read independently. The word 'includes' carry a significant meaning and importance in this regard, which suggests that wherever any subject matter is not expressed with the main part of legislation, prescription of such matters are brought within its fold by

mollifying of rigors ingredients and the word 'includes' serves this purpose. Therefore, to me, the RTI Act envisages the variety of categories of public authorities. All those authorities, bodies or institutions, self government organizations, which are established or constituted by or under the Constitution or by any other law made by the Parliament or State Legislature or by notification issued or order made by the appropriate Government, fall in the first category, whereas in second part, the "public authority" has been defined to include any body owned, controlled or non-government organization substantially financed by the funds provided directly or indirectly by the appropriate Government. In this manner, the subsequent part of section 2(h) brings an independent and additional category of public authority within the meaning of RTI Act.

37. A conjoint reading of the aforesaid provisions, relatable to the aims, objects and larger public interest, would reveal that any authority or body or institution of self Government established or constituted under the Constitution, by any other law made by Parliament or the State Legislature or by notification issued or order made by the appropriate government and includes any body owned, controlled or substantially financed and non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate government, are the public authorities within the meaning of RTI Act.

38. Meaning thereby, apart from the authorities established or constituted by the Government depicted in clauses (a) to (c) and any authority, body owned, controlled and non-Government Organization substantially financed by funds provided directly or indirectly by the appropriate government as mentioned in sub-clauses (i) & (ii) of clause (d) would squarely falls within the ambit of public authority independently as provided under section 2(h) of the Act and are legally required to provide informations to the complainants.

39. Such thus being the legal position and material on record, now the short and significant question, though important, that arises for determination in

the instant petitions, is as to whether the petitioner-Institutions include the bodiers owned, controlled or non-government organizations substantially financed by the funds provided directly or indirectly by the appropriate Government as defined under section 2 of the RTI Act or not?

40. Having regard to the rival contentions of the learned counsel for the parties, to me, the answer must obviously be in the affirmative and the indicated institutions are public authorities and squarely fall within the ambit and purview of RTI Act in this respect.

41. What is not disputed here is that the petitioner-Institutions (Coop. Societies, banks & Sugar Mills) (at Sr.Nos.1 to 8) are registered and governed by the provisions of The Punjab/Haryana Cooperative Societies Acts. As the provisions of these Acts are para materia, similar and cover almost the same regime, therefore, reference in this connection may be made to some of the provisions of the Punjab Cooperative Societies Act in this direction. In pursuance of the policy of the Government of India to simplify the Cooperative Law and procedure in order to remove all bottleneck in the way of development of cooperative movement in the country, the Cooperative Societies Acts were amended by introducing the number of new provisions in general and relating to cooperative fund, audit, surcharge, offences and penalty etc. in particular. Section 2 of this Act defines bye-laws, committee, cooperative society, Government, officer, Registrar etc. Chapter II deals with the Registration of Cooperative Societies, control of Registrar and other officers and their powers.

42. According to section 3, only the Government may appoint a person to be the Registrar of Cooperative Societies for the State and such number of Additional Registrars, Joint Registrars, Deputy Registrars, Assistant Registrars and other persons to assist the Registrar. The Government has the absolute power to confer on any person or any power of Registrar by general or special order. Every such person appointed under sub-section (2) shall exercise his powers subject to

the general superintendence and control of the Registrar. Every Cooperative Society is required to be registered under section 4 and there are restrictions on their Registration under section 5 and method of registration is provided under sections 6 to 9 of the said Act.

43. Sections 10 to 13 postulate that no amendment of any bye-laws of a cooperative society shall be valid unless such amendment has been registered under this Act. Even society cannot amend bye-laws changing name and liability and it cannot amalgamate, transfer of assets, liability and division of cooperative societies without the prior approval of the Registrar.

44. Section 15 lays down the qualification for person to be a member of the society. Chapter VII deals with audit, inquiry, surcharge and inspection of the record of the society, while sections 55 and 56 of the said Act deal with the determination of disputes between the members and the societies by the bureaucrat (IAS) Registrar to be appointed by the Government. Chapter IX deals with the winding up of the Cooperative Societies while Chapter X provides the mechanism of the execution of the award, decrees, orders and attachment of property before award by the Registrar.

45. Section 66 further posits that Registrar or any other person empowered by him when exercising any power under this Act for the recovery of any amount by the attachment and sale or by the sale without attachment of any property and for taking a step-in-aid of such recovery to be Civil Court. All the disputes are to be settled by the arbitrator. The appeals and revisions are to be decided by the bureaucrats (IAS) (appellate authorities), as contemplated under Chapter XI of the Act. The Cooperative Societies Act enables the State Government to directly subscribe to the share capital of the society and to provide monetary assistance to it for the purpose of share of other society. The State Government is directly controlling the society by its funds and has indirect partnership in it.

46. Not only that, the bare perusal of the record would reveal that the petitioner-institutions are registered under the provisions of the Punjab/Haryana Cooperative Societies Acts and all sugar mills are controlled by Sugarfed in regard to policy decision etc. The Governments have issued NIT and negotiated with respect to purchase a machinery of the Sugar Mills. General Manager is Incharge cadre officer of the Sugarfed. The respective Governments have framed aided schemes to finance the petitioner-Institutions such as financial assistance to the Cooperative Societies, IDP project, NCDT scheme etc. besides providing other funds in the shape of share capital. Moreover, the petitioner-Institutions are directly or indirectly dealing with the public. The Managing Director and the Govt. Officers have direct administrative control over the Sirsa District Cooperative Milk Producers Union Ltd. (at Sr.No.6), which is also funded by the State Government through the medium of many schemes. All the activities of posting and transfers of the Milk Union are controlled by the MD, who is an IAS officer. The Government of Haryana appointed the Civil Service (HCS) officer as administrative officer. Its employees are selected and appointed by the Haryana Staff Selection Board and Haryana Civil Service Commission. Therefore, I have no hesitation in observing that these institutions come into existence, function and are the bodies controlled by the appropriate Governments, by means of the Cooperative Societies Acts.

47. Now adverting to the determination of the Ist question, as to whether the other petitioner-Institutions (Gita Girls Sr.Secondary School including Model School & Saini Education Society-schools) (at Sr.Nos.9, 10 & 11) are bodies/authorities owned and controlled by the appropriate Government. In this regard, admittedly they are regulated, controlled and governed by the provisions of the Education Act, which is applicable to the whole of State of Haryana, Section 2 of which, defines the 'affiliation' and 'aid' means any aid granted to a recognized school by the Government, a local authority or any other authority designated by

the Government, Director or a local authority. 'Aided school' means a recognized private school, which is receiving aid in the form of grant from the Government.

48. Similarly, the "appropriate authority" has been defined to mean in the case of a school recognized or to be recognized by an authority designated or sponsored by the Government, that authority; in case of disbursement of grant to recognized private aided schools, the authority designated by the Director. 'Board' means the Board of School Education, Haryana, the Central Board of Secondary Education, or any other Board which the State Government may, from time to time specify. "Director" means Director, Secondary Education/Director, Primary Education, as the case may be, and includes any other officer authorised by the Government in this behalf. The "school" includes a primary, middle, high or senior secondary school and also includes any other institution which imparts education or training below degree level and "Secretary" means the Secretary to Government, Haryana Education Department.

49. Likewise, section 3 postulates that the Government may regulate education in all schools in the State in accordance with the provisions of this Act and the rules made thereunder. The Government may establish and maintain any school in the State or may permit any person or local authority to establish and maintain any school in the State, subject to the provisions of this Act and rules made thereunder. The establishment of a new school or the opening of a higher class or the closing down of existing class in the State, after the commencement of this Act and subject to the provisions of clause *(1)* of Article 30 of the Constitution of India, shall be subject to the provisions of this Act and the rules made thereunder and any new school or higher class established or opened otherwise than in accordance with the provisions of this Act, shall not be recognized by the appropriate authority. (defined under section 2)

50. Every school has to move an application under section 4 to the appropriate authority for its recognition and no school shall be recognized unless

fulfills all the terms and conditions mentioned therein. Section 5 of the Act has overriding effect, which posits that notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any such law, the managing committee of every recognized school shall make, in accordance with the rules made under this Act and with the previous approval of the appropriate authority, a scheme of management for such school and even in the case of a recognized private school which does not receive any aid, the scheme of management shall apply with such variations and modifications as may be prescribed.

51. Section 6 deals with the grant of aid to recognized schools, while the terms and conditions of service of employees of aided schools are governed by section 8. As per section 9, every employee of an aided school shall be governed by such code of conduct as may be prescribed and on the violation of any provision of such code of conduct, the employee shall be liable to such disciplinary action as may be prescribed.

52. Above-all, the Government has the over all power and control to take over the management of aided schools as contemplated under section 10, which is as under:-

> ***(1)*** *If the Director is satisfied that the managing committee or the manager has indulged in any financial irregularity or administrative mismanagement or neglected to perform any of his duties imposed on it by or under this Act or any rule made thereunder and that it is expedient in the interest of school education, to take over the management of such school, he may after giving the managing committee or the manager of such school, a reasonable opportunity of showing cause against the proposed action, take over the management of such school for a limited period not exceeding two years:*
>
> *Provided that where the management of a school has been taken over for a period of two years or less, the Director may, if he is of the opinion that in order to secure proper management of the school it is expedient that such management should continue to be in force after the expiry of said limited period he may from time to time, issue directions for the continuance of such management for such period not exceeding one year at a time as he may think fit, so, however, that the total period for which such management is taken over shall not in any case exceed three years.*
>
> ***(2)*** *Whenever the management of any school is taken over under sub-section (1), every person incharge of management of such school immediately before its management is*

taken over, shall deliver possession of the school property to the Director or any officer authorised by him in this behalf.

(3) *After taking over the management of any school under this section the Government may arrange to manage the school through a person (hereinafter referred to as the "Administrator") authorised by the Director.*

(4) *Where the management of any school has been taken over under sub-section (1), the managing committee or manager of such school may within three months from the date of taking over, appeal to the Secretary, who may after considering the representation made by managing committee or manager, pass such orders, including an order for the restoration of the management or for the reduction of the period during which the management of such school shall remain vested in the Director, as he may deem fit.*

(5) *Where the management of a school has been taken over under this section, the Government shall pay such rent as may be payable or the building of the school to the person entitled to receive it, as was being paid by the managing committee or the manager immediately before the management of such school was taken over.*

(6) *During such period as any school remains under the management of an Administrator-*

(a) the service conditions, as approved by the Director, of the employees of the school who were in employment immediately before the date on which the management was taken over, shall not be varied on to their disadvantage;

(b) all educational facilities which the school had been affording immediately before such management was taken over shall continue to be afforded;

(c) the school fund, the pupil fund, and any other existing fund shall continue to be available to the Administrator for being spent for the purpose of the school; and

(d) no resolution passed at any meeting of the managing committee of such school shall be given effect to unless approved by the Director."

53. Similarly, Chapter V empowers the Government to prescribe minimum qualifications for recruitment and code of conduct of the employees of petitioner-schools. The admission to schools, fees, other charges, funds and affiliation are controlled by the Government as per procedure prescribed in Chapter VI. Section 21 deals with the inspection of schools by the State authorities. The jurisdiction of civil courts is barred under section 22 of Education Act. Section 24 ibid empowers the State Government to make rules for carrying purpose of the Act.

54. Not only that, the Haryana Government has formulated the Rules, 2001 to regulate qualifying service, retiral benefits, condition of interruption, superannuation pension, compensation, death-cum-retirement gratuity, family pension and adjustment of dues etc. Again, the petitioner-schools are subject to the

provisions of the Haryana School Education Rules, 2003.

55. In addition to it, the petitioners Model School and Saini Education Society schools, Rohtak (at Sr.Nos.10 & 11 respectively) are further registered, governed, regulated and controlled by the provisions of The Societies Registration Act, 1860.

56. In the same sequence, the petitioners-PCA (at Sr.No.12), Jullundur Gymkhana (at Sr.No.13), CLTA (at Sr.No.14), and The Sutlej Club (at Sr.No.15) are also registered, governed and regulated by the provisions of the Societies Registration Act and are legally required to act as per the terms and conditions of memorandum of association under section 2 of this Act

57. Section 3 of the Societies Registration Act provides the method of registration and fees of the society. Section 4 escalates that every such society is required to call annual general meeting of the society as per rules and in the absence of the rules, in the month of January. A list has to be filed with the Registrar of Joint-Stock Companies, of the names, addresses and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society. According to section 5, movable and immovable property, belong to a society registered under this Act. Every society registered under the Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees under section 6. Section 8 deals with the enforcement of judgment against the society. Section 9 provides the method and mechanism of recovery of penalty under bye-law and members of the society guilty of offences punishable as strangers under section 11. Section 12 postulates that societies enabled to alter, extend or abridge their purposes except the method. Provision for dissolution of societies and adjustment of their affairs are governed by sections 13 and 14. Section 15 provides the qualification and dis-qualification of the members. Section 16 defines the governing body. Section 19 deals with the inspection of documents and certified copies. Section 20 posits the

application of the Act.

58. The Hon'ble Apex Court in case Mr.Ajay Hasia etc. v. Khalid Mujib Sehravardi and others **1980 S.L.R. 467 (FB)** has ruled that it is immaterial for the purpose of Articles 12 and 226 of the Constitution as to whether the Corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The Corporation may be a statutory created by a statute or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an 'authority' within the meaning of Art.12 if it is an instrumentality or agency of the government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society. On the same principle, Mehar Chand Polytechnic College run by DAV College Managing Committee was held to be amenable to writ jurisdiction by this Court in case C.L.Kochhar v. State of Punjab and others **1992(2) SLR 496.**

59. Moreover, a five Judges Full Bench of this Court case Ravneet Kaur v. The Christian Medical College, Ludhiana, **1997(3) SCT 210 : AIR 1998 Punjab & Haryana 1** has observed that since such institutions discharge public functions, so, these cannot be regarded as a private individual limiting the powers of the Court in issuance of directions including prerogative writs. It has further been held that once the institutions are performing the public functions in imparting of education irrespective of any financial aid, affecting the life of a huge segment of the society and in addition are receiving substantial grant-in-aid, then it cannot be argued that such institutions are not the public authorities.

60. In this manner, instead of reproducing the entire sections, schemes and mandate of the indicated Acts, legal position and in order to avoid the

repetition, suffice it to say, not only that, the petitioner-Institutions cannot possibly come into existence, but they cannot function as well, in any manner, without the approval or direction issued by the bureaucrat officers appointed by the appropriate Government and without complying with the mandatory provisions of the Acts. That means, the petitioner-Institutions are certainly the bodies controlled by the State Governments through the medium of the provisions of the above stated Acts and Rules in the manner as discussed hereinbefore. In that eventuality, it cannot possibly be saith that the petitioner-Institutions are not established or constituted or bodies not owned, substantially financed and controlled by the State government within the meaning of RTI Act, as urged on their behalf.

61. Faced with the situation, the learned counsel for the petitioner-institutions then raised another interesting contention that as the share capital of the Government in the societies/banks/Sugar Mills (at Sr.Nos.1 to 8) is less than 50% and in other petitioner-organizations (at Sr.Nos.9 to 15), the financial aid is not substantial, therefore, it cannot be termed that these institutions include the bodies owned, controlled or non-government organization substantially financed by the funds provided directly or indirectly by the appropriate Governments. At the first instance, the argument appeared to be very very attractive but when the same was analyzed in relation to the material on records, then I cannot help observing that the contention is not tenable.

62. As regards the financial aid to the societies/banks/Sugar Mills is concerned, it has come on record that the share capital of the government is 36% in case at Sr.No.5; 12.13% in case at Sr.No.4 and ₹ 83.33 lacs out of share capital of ₹ 12.54 crores in case at Sr.No.8.

63. Now adverting to the financial aid to the petitioner-Gita Girls School (at Sr.No.9), the bare perusal of the record would reveal (as observed by the SIC) that the petitioner-school had received a sum of ₹ 2,37,912/-, 1,86,931/- and 1,58,760/- as financial aid for the years 2008-09 and 2009-10 respectively from the

District Education Officer, Kurukshetra. It has also received a sum of ₹ 4 lacs from MPLAD Scheme for the year 2007-08. Another sum of ₹ 15 lacs was also sanctioned and released to the school for building purpose.

64. In so far as the Model School (at Sr.No.10) is concerned, admittedly, the Deputy Commissioner is its President. He not only preside over the meeting of the society and its Executive Committee, but also supervise, superintendent the working of the affairs of the school and its activity under Rule 21 of the Rules and Regulation. As per Rule 4 of this society, Administrator, Haryana Urban Development Authority (in short "HUDA"), Executive Officer, Municipal Commissioner, Superintending Engineers, PWD (B&R) & Public Health, Director, PGIMS, Rohtak are the founder members of the Society and Executive Committee in their ex-officio capacity. The SIC has noticed in the impugned order that in fact, the petitioner-school was set up by Sh.H.D.Shourie, the then DC Rohtak. In this manner, all the affairs of the petitioner-school are deeply managed and controlled by the Government Officers, bureaucrats and Engineers. So much so, HUDA, a statutory body of the State, has allotted the prime school building constructed at the cost of ₹ 2.26 crore on HUDA land for a period of 30 years by relaxation of rules on lease hold basis at the nominal lease amount of ₹ 100/- per annum for running the school of the society in the heart of city Rohtak.

65. Similarly, petitioner-Saini Education Society (at Sr.No.11) received annual grant of ₹ 43 lacs from the government out of total expenditure of ₹ 70 lacs. As per report of District Education Officer, the petitioner-society is receiving the government grants to the tune of 75% of the salaries of the sanctioned posts, which was released in favour of schools of the society. It owns and manages the five educational institutions and audit by the State Govt. It has common budget and single balance sheet. Earlier the society has also appointed the SPIO, who supplied the informations to various information seekers.

66. The matter did not rest there. The SIC has earlier directed this

petitioner-society to supply the information in some what similar circumstances. Dissatisfied with the order of SIC, the petitioner-society filed CWP No.3144 of 2009, which came to be disposed of by a Coordinate Bench (Kanwaljit Singh Ahluwalia, J.) of this Court, by means of order dated 14.12.2009, which, in substance, is as under:-

> *"Saini Education Society, Rohtak has approached this Court with a prayer that order (Annexure P-9) dated 29th January, 2009 passed by the State Information Commission, Haryana, where by the petitioner Society has been held to be covered under the Right to Information Act, 2005, be quashed.*
>
> *Counsel for the petitioner submits that all the information to the satisfaction of respondent No.3 shall be handed over to him on 24th December, 2009 at 10.00 a.m.*
>
> *Mr. Chander Bhan Saini, respondent No.3, who is present in Court, submits that as a public spirited person he is pursuing the present litigation and he is not interested in the cost, and in the magnanimity, he will forgo the cost.*
>
> *Counsel for the petitioner bow before the magnanimity of respondent No.3 and states that respondent No.3 will be provided all the information.*
>
> *In view of the statement made by counsel for the petitioner, nothing survives in the present petition and the same stands disposed of.*"

67. Therefore, once this society has appointed the SPIO and provided the informations to other information seekers, in that eventuality, now it is estopped from denying and it cannot possibly be heard to say that the RTI Act is not applicable to it.

68. Now adverting to the case of petitioner-PCA (at Sr.No.12), it is admitted position that it is enjoying tax exemption from entertainment tax, which is an direct financial aid by the State to it. Although the SIC has negatived the plea of the complainant-information seeker, but to my mind, the SIC has slipped into deep legal error in this regard, because the PCA is saving heavy amount from exemption of entertainment tax, which naturally is an incidence of financial aid by the Government. In addition to it, the PCA is substantially financed directly or indirectly by the appropriate Government in the following manner as held by the SIC:-

(i) *"13.56 acres of land in Sector 63, SAS Nagar Mohali has been leased out by the Government of Punjab to the Punjab Cricket Association at a token rental of Rs.100/- per acre, per annum. The duration of the lease is 99 years commencing from the 16th*

day of June, 1992. As per the lease agreement, the Punjab Cricket Association has been given a right to construct a Cricket stadium and club house on the land.

(ii) As per documents produced by the Punjab Cricket Association before the Commission, it has up to 31.03.1997, received grants to the tune of Rs.1107 lacs from PUDA (Rs.1015 lacs), Punjab Sports Council (Rs.15 lacs) and Punjab Small Savings (Rs.77 lacs). It is also stated that PCA has raised Rs.2026.66 lacs from BCCI and its own resources like matches, commercial income/advertisements/sponsorships etc.

(iii) A letter dated 21.08.1998 addressed by the Administrative Officer of the PCA to the Chief Accounts Officer, PUDA, states that association has received till date the following amounts from PUDA:-

(a) Construction of Cricket Stadium – Rs.8.50 crores

(b) Construction of Club house -- Rs.1.65 crores

(iv) As per letter dated 15.01.2008 written by PUDA (erstwhile PHDB) to the PIO, GMADA, Mohali, the PUDA/PHDB (both wholly owned Punjab Government institutions) have given financial aide to Punjab Cricket Association to the tune of Rs.1015.00 lacs through Sports Department.

(v) The various balance sheets/income and expenditure accounts placed on the record show that huge amounts of money have been generated/earned by the Punjab Cricket Association through reimbursement/subsidy from BCCI, tournament subsidy others, Share of TV rights, contribution/receipts from members, income from premises/facilities and income from international matches etc."

So much so, the Government of Punjab is providing the total security to PCA at every occasion and event by spending huge amount of payment on police agencies.

69. The Hon'ble Supreme Court during the course of dealing in some what similar circumstances in case Board of Control for Cricket, India and another v. Netaji Cricket Club and others **2005 AIR (SC) 592** has observed (para Nos.80 to 82) as follows:-

"80. The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regard regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It inter alia enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to the viewers but also selling right to exhibit films live on TV and broadcasting the same. Ordinarily, its full members are the State Associations except, Association of Indian Universities, Railway Sports Control Board and Services Sports Control Board. As a member of ICC, it represents the country in the international foras. It exercises enormous public functions. It has the authority to select players, umpires and officials to represent the country in the international fora. It exercises total control over the players, umpires and other officers. The Rules of the Board clearly demonstrate that without its

recognition no competitive cricket can be hosted either within or outside the country. Its control over the sport of competitive cricket is deep pervasive and complete.

81. In law, there cannot be any dispute that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fairness' and 'good faith' in all its activities. Having regard to the fact that it has to fulfill the hopes and aspirations of millions, it has a duty to act reasonably. It cannot act arbitrarily, whimsically or capriciously. As the Board controls the profession of cricketers, its actions are required to be judged and viewed by higher standards.

82. An association or a club which has framed its rules are bound thereby. The strict implementation of such rules is imperative. Necessarily, the office bearers in terms of the Memorandum and Articles of Association must not only act within the four corners thereof but exercise their respective powers in an honest and fair manner, keeping in view the public good as also the welfare of the sport of cricket. It is, therefore, wholly undesirable that a body in-charge of controlling the sport of cricket should involve in litigations completely losing sight of the objectives of the society."

70. In so far as the case of petitioner-Jullundur Gymkhana-club (at Sr.No.13) is concerned, as per clause 27 of the Constitution Memorandum of Association, The Divisional Commissioner becomes the ex-officio President and the DC becomes Senior Vice President of the Club. The learned counsel for petitioner-club has acknowledged that all the Commissioners and DCs posted since 2001 have held the ex-officio appointments of President and Vice President of petitioner-club. In addition to it, 216344 Sq.ft of land contiguous to Residence Commissioner, Jalandhar Division was leased out by the Government of Punjab to this Club at a token rental of ₹ 889/- per annum. According to the affidavit of Commissioner dated 9.7.2009, as per revenue record, this land is in the name of Commissioner, Jalandhar Division, belong to provincial Govt. and Punjab PWD (B&R) Department is in-charge of such Govt. land. The club has covered area of approximate 47000 sq.ft over the government land. The net income of the club for the financial year ending 31.3.2008 was ₹ 1,02,84,468.84/-. The various balance/income sheets and expenditure accounts placed on the record show that huge amounts of money have been generated/earned by the club through contribution/receipts from members, interest earned on various fixed deposits and income from premises/facilities and financial aid. The SIC has held that the factum

of their millions in the kitty of the Jullundur Gymkhana is directly attributable to the land and subsequently development of infrastructure provided on a paltry sum of ₹ 889/- per annum by the State of Punjab.

71. As regards the petitioner-CLTA (at Sr.No.14) is concerned, the Chandigarh Administration is owner of the stadium in Sector 10, Chandigarh comprising of a building and Tennis Courts, adjoining the stadium alongwith other facilities on lease to CLTA for a period of 20 years. The CLTA is running its affairs. It is arranging the national tournaments. UT Administration has leased out the entire premises valued at crores of rupees and meagre rent payable by it is only ₹ 100/- per annum. The Administration has also contributed to the CLTA financial aid of ₹ 1 lac in financial year 2008-09. As per circular dated 30.3.2010 issued by the department of Sports provides that the Government has concluded that the National Sports Federations are doing the State function and are dependent on Government funding for performing this task and substantially financed by the Government. Therefore, they are public authorities under RTI Act. In this respect, SIC has observed as under:-

> *"Needless to say, the cost of these properties would run into crores of rupees at the prevailing market rate. It is common ground that if CLTA were to hire these facilities in the open market, it would be required to pay a huge rental compared to the one being paid to CLTA. Besides, concededly, Chandigarh Administration has contributed about Rs.1 lac to the coffers of CLTA in the Financial Year 2008-09. It is to be noted that Chandigarh Administration is an "appropriate Government" and it has placed huge infrastructure at the disposal of CLTA for a notional rental of Rs.100/- per annum. In this view of the matter, it would appear that CLTA has been indirectly financed by the Chandigarh Administration."*

72. Now adverting to the financial help of petitioner-Sutlej Club, Ludhiana (at Sr.No.15) is concerned, the SIC mentioned that as per revenue record, the land owned by the Provincial Government is given to the Club, which amounts to substantial financial assistance by the State Government. The fact that the valuable land, upon which, the Club was constructed, belongs to the Government and no rent/lease is paid by it to the Government shows that there is a

substantial financial assistance by the State to the Club. The cost of prime land provided to the club would be much more than its normal revenue expenditure. Apart from land provided for construction of the club building, the Government has also incurred a part of expenditure on its construction. According to Rule 24 of the Constitution and Bye-laws of the club, the DC, Ludhiana shall always be the President in his ex-officio capacity. In my view, the SIC has recorded the correct finding of fact based on the material on record, by virtue of impugned order dated 8.7.2010 (Annexure P15).

73. The observations made in BCCI's case (supra) "mutatis mutandis" are applicable to these institutions as well. Thus, it would be seen that the petitioner-Institutions are not only bodies controlled by the appropriate Government, by means of the provisions of different Acts and Rules described hereinabove, but they are also substantially financed by the funds provided directly or indirectly by the appropriate Government.

74. Keeping in view the extent of direct or indirect financial aid as depicted hereinabove, the next feeble argument of the learned counsel for petitioner-institutions that direct or indirect financial help provided by the appropriate Governments is not substantial, as envisaged under the RTI Act, is again not tenable and misconceived as well.

75. What is not disputed here is that the word "substantial" has not been defined under RTI Act and has no limited or fixed meaning. For the purpose of legislation, it has to be construed in its ordinary and natural sense relatable to the aims, fundamental purpose and objects sought to be achieved to provide transparency to contain corruption and to promote accountability under the RTI Act. Hardly, there is any quarrel that money and position have acquired the power to derail justice which, if delivered within a framework of honesty and integrity, it can be a great equaliser.

76. Taken in the context of public larger interest, the funds which the

Government deal with, are public funds. They belong to the people. In that eventuality, wherever public funds are provided, the word "substantially financed" cannot possibly be interpreted in narrow and limited terms of mathematical, calculation and percentage (%). Wherever the public funds are provided, the word "substantial" has to be construed in contradistinction to the word "trivial" and where the funding is not trivial to be ignored as pittance, then to me, the same would amount to substantial funding coming from the public funds. Therefore, whatever benefit flows to the petitioner-institutions in the form of share capital contribution or subsidy, land or any other direct or indirect funding from different fiscal provisions for fee, duty, tax etc. as depicted hereinabove would amount to substantial finance by the funds provided directly or indirectly by the appropriate Government for the purpose of RTI Act in this behalf.

77. A similar question came to be considered by the Kerala High Court in case Thalapalam Service Cooperative Bank v. Union of India **2009(3) C.C.C. 273 = 2010 (5) RCR (Civil) 133.** Having interpreted the word "substantial" it was ruled (paras 27 & 30) as under :-

> "27. *The word "substantial" has no fixed meaning. For the purpose of a legislation, it ought to be understood definitely by construing its context. Unless such definiteness is provided, it may be susceptible to criticism even on the basis of Article 14 of the Constitution. See* ***Shree Meenakshi Mills Ltd. v. A.V. Viswanatha Sastri (AIR 1955 SC 13*** *at page 18). The word substantial means - of or having substance: being a substance : essential : in essentials : actually existing: real: corporeal, material : solid and ample: massy and stable: solidly based: durable: enduring: firm, stout, strong: considerable in amount: well-to-do: of sound worth. See the Chambers 20th Century Dictionary. In fact, the concept "substantial" has been understood in different shades and applied contextually. In relation to Section 100 of the Code of Civil Procedure, it was held that a substantial question of law means a question of law having substance, essential, real, important. It was understood as something in contradistinction to - technical, of no substance or consequence, or merely academic. See* ***Santhosh Hazari v. Purushottam Tiwari, 2001(3) RCR(Civil) 243 : [(2001)3 SCC 179]****. "Substantial interest" in the context of the Income Tax Act was found to require a contextual construction, having regard to the succeeding expressions which enumerated what substantial interest really meant. See* ***R. Dalmia v. C.I.T. [(1977) 2 SCC 467]****. "Substantial portion of such goods", an expression occurring in the Customs Act, was understood to mean substantial portion of the goods, that have been imported keeping in*

view the quantity as well as the value of the goods that have been imported. See ***India Steamship Co. Ltd. v. Union of India [(1998) 4 SCC 293]****. Such a spectrum of substantial wisdom essentially advises that the provision under consideration has to be looked into from the angle of the purpose of the legislation in hand and the objects sought to be achieved thereby, that is, with a purposive approach. What is intended is the protection of the larger public interests as also private interests. The fundamental purpose is to provide transparency, to contain corruption and to prompt accountability. Taken in that context, funds which the Government deal with, are public funds. They essentially belong to the Sovereign, "We, the People". The collective national interest of the citizenry is always against pilferage of national wealth. This includes the need to ensure complete protection of public funds. In this view of the matter, wherever funds, including all types of public funding, are provided, the word "substantial" has to be understood in contradistinction to the word "trivial" and where the funding is not trivial to be ignored as pittance, the same would be "substantial" funding because it comes from the public funds. Hence, whatever benefit flows to the societies in the form of share capital contribution or subsidy, or any other aid including provisions for writing off bad debts, as also exemptions granted to it from different fiscal provisions for fee, duty, tax etc. amount to substantial finance by funds provided by the appropriate Government, for the purpose of Section 2(h) of the RTI Act.*

30. A survey of the different Government Orders, Policy Documents etc. would show that apart from the share capital contribution to the District Co- operative Banks, to the Primary Agricultural Credit Co-operatives, to the Kerala State Co- operative Bank and capital involvement in Urban Co-operative Banks etc., there is contribution by way of subsidies in different sectors. Different other types of funding like outright grant and selected funding are also made available to different sectors. None of the writ petitioners has a case that it does not enjoy any of these facilities. The petitioners cannot sustain a case that they are not substantially financed by the Government. Predominantly, the presumption has necessarily to be in favour of holding that all the societies are substantially financed by funds provided by the State Government. Such finance may trickle by any mode without even any contribution by the Government, from out of its own funds, over which it has title. The Government is the machinery through which the finance reaches the societies, either by way of credits, subsidies, exemptions, other privileges including writing off of bad debts, which would otherwise have to be paid back into public funds. Having regard to the object sought to be achieved by the RTI Act, it is impermissible to presume to the contrary, particularly when transparency is a matter to be ensured even in the co-operative sector. It needs to be remembered that the promotion of societies by the State, including by its legislative support, is with a view to provide for the orderly development of the co-operative sector by organising the co-operative societies as self governing democratic institutions to achieve the objects of equality, social justice and economic development, as envisaged in the Directive Principles of State Policy of the Constitution of India. The RTI Act has become operational propounding the need of a democracy to have an informed citizenry. Containing corruption is absolutely essential for a vibrant democracy. Transparency and accountability in societies have necessarily to be provided for. The legislative provision in hand, therefore, requires a purposive

construction in the above manner."

Hence, it was held that all the Cooperative Societies registered under the Cooperative Societies Acts are the public authorities and are bound to act in conformity with the provisions of the RTI Act.

78. Again an identical question came to be decided by a Division Bench of this Court in D.A.V.College Trust's case (supra) wherein having interpreted the provisions of Section 2(h) (d) of RTI Act, it was held as under:-

> *"A perusal of the definition of `public authority' shows that `public authority' would mean any authority or body or institution established or constituted apart from other things by the notification issued by an order made by the appropriate Government. It is to include even any body owned, controlled or substantially financed or non-Government Organisation substantial financed directly or indirectly by the funds provided by the appropriate Government. It is undisputed that the petitioners are receiving substantially grant-in-aid from the Chandigarh Administration. Once a body is substantially financed by the Government, the functions of such body partake the character of `public authority'. The definition of expression `public authority' itself shows that `public authority' would include any organisation/body owned, controlled or substantially financed directly or indirectly by funds provided by the Government or even the non-government organisation which is substantially financed. The petitioner has claimed that they are getting only 45% grant-in-aid after admitting that initially the grant-in-aid paid to them was to the extent of 95%. If on account of policy of the Government the grant-in-aid to the extent of 95% which was given initially allowing the petitioner to build up its own infrastructure and reducing the grant-in-aid later would not result into an argument that no substantial grant-in-aid is received and therefore it could not be regarded as `public authority'. Therefore, we do not find any substance in the instance taken by the petitioner that it is not a `public authority'.*

79. In the same manner, the Delhi High Court has considered the similar matter in case titled as "Indian Olympic Association Vs. Veeresh Malik & Ors.", WP(C) No.876 of 2007, decided on 7.1.2010 and observed (paras 73 to 76) as follows:-

> *"73. The factual picture which emerges from the above discussion, in relation to the schools petition, is that it received amounts in excess of Rs.24 crores by way of grants. There is opaqueness about these grants; interestingly, the Ministry of Human Development did not sanction the grant; individual ministries and agencies (such as the Customs Department, Reserve Bank of India) etc. sanctioned monies apparently from their budgets. Whether this kind of grant or donation to private schools could be budgeted for, is not in issue. Yet, the fact established from the record is that the school could access, and muster these funds, which undeniably cannot be done by other private schools. There is no policy suggestive of the Central Government agreeing to donate such large amounts to private schools, even if a larger public objective of education is furthered. Moreover, all indications are that the school operates as an*

unaided institution, and does not charge subsidized fees. Therefore, only children of those wards who can afford such fees, can access its services. Another interesting aspect is that the departments or agencies (or at least some of them) imposed a condition that the wards of their officers would be given admissions. There is nothing on record to suggest any Central Government policy to prioritize education of wards of children of its employees, through donations to private schools – even on one time basis. The school agreed to maintain its accounts in terms of the rules of the Government applicable to Grants in Aid institutions (insisted upon by the Customs Department); its accounts are to be subject to scrutiny and audit by the CAG. Further, nominees of the Central Government are required to be part of its Managing Committee – mandated by the allotment letter, issued by the Union Urban Affairs Ministry.

74. As discussed earlier, grants by the Government retain their character as public funds, even if given to private organizations, unless it is proven to be part of general public policy of some sort. Here, by all accounts, the grants – to the tune of Rs.24 crores were given to the school, without any obligation to return it. A truly private school would have been under an obligation to return the amount, with some interest. The conditionality of having to admit children of employees of the Central Government can hardly be characterized as a legitimate public end; it certainly would not muster any permissible classification test under Article 14 of the Constitution. The benefit to the school is recurring; even if a return of 10% (which is far less than a commercial bank's lending rate) is assumed for 6 years, the benefit to the school is to the tune of Rs.14.88 crores. This is apart from the aggregate grant of Rs.24.8 crores, and the nominal concessional rate at which the school was allotted land for construction.

75. On a consideration of all the above factors, this court holds that the school fulfills the essential elements of being a non-government organization, under Section 2(h) of the Act, which is substantially financed by the Central Government, through various departments, and agencies. It is therefore, covered by the regime of the Act.

76. India is in the midst of challenges. On the one hand is a continuing task to ensure social justice and equity to all the people, and on the other, the imperative of economic growth and development, as well as the spread of its benefits to all. Educating, clothing and providing shelter, employment and basic health care to all the people are non-derogable priorities. The model chosen by the government of ensuring spread of welfare and its benefits, include functioning through non-government agencies, who are tasked and assisted for this purpose. The crucial role of access to information here cannot be understated. It is in this context that Section 2 (h) recognizes that non-state actors may have responsibilities of disclosing information which would be useful, and necessary for the people they serve, as it furthers the process of empowerment, assures transparency and makes democracy responsive and meaningful."

80. The same view was reiterated by the Division Bench of this Court in *Principal, M.D.Sanatan Dharam Girls College's case (supra)*. Again, it was held by the Allahabad High Court in *Dhara Singh Girls High School's case (supra)* that whenever there is even an iota of nexus regarding control and finance of public authority over the activity of a private body, institution, private schools receiving grand-in-aid from the State Government, the same would fall under the provisions

of the RTI Act.

81. In this view of the matter, predominantly, the presumption has necessarily to be in favour of holding that all the petitioner-Institutions are substantially financed by funds provided by the appropriate Government. Such finance may trickle by any mode without even any major contribution by the Government from out of its own funds, over which it has tilted. The government is the machinery, through which, the finance reaches the institutions directly or indirectly. The aforesaid observations are fully applicable to the facts of the present cases. Therefore, it cannot possibly be saith and petitioner-institutions cannot possibly be heard to contend that they are not substantially financed by the appropriate Government in this relevant connection as urged on their behalf.

82. In the light of aforesaid reasons and thus seen from any angle, it is clearly established and is hereby held, not only that the petitioner-Institutions are the bodies owned and controlled by the State Government, in view of the provisions of the relevant Acts/Rules, but the same are the authorities substantially financed by the funds provided directly or indirectly by the appropriate Government as well, particularly when the complainants, who are public spirited persons, are not claiming any monetary/proprietary rights or any kind of share from their empire. They are only praying for the informations. Strange enough to observe that why the petitioner-institutions are feeling shy and are so scared in imparting the informations to them (complainants). Hence, they are the public authorities within the meaning of RTI Act, which serves a larger public interest.

83. Finding no alternative, the next cosmetic argument of the learned counsel for the petitioner-Institutions that as the informations sought by the complainants are exempted, in view of section 8 of the RTI Act, therefore, the SIC did not have the jurisdiction to direct them to supply the informations sought by the complainants, is again not only devoid of merit but misplaced as well.

84. As indicated earlier, a combined reading of the aforesaid provisions of exemption clauses would reveal, only those informations are exempted, the disclosure of which, has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual, unless the authorities are satisfied that the larger public interest justifies the disclosure of such information. That means, as all the essential ingredients of exemption clause are totally lacking, therefore, the petitioner-institutions cannot claim their exemption.

85. I have carefully gone through the kind of informations sought by the complainants in all the cases, but to me, all the informations sought by the complainants are routine, general in nature and exhibiting the public interest, which cannot possibly be termed as unwarranted invasion of privacy of the petitioner-Institutions and do not fall within the exemption clause as held by this Court in cases D.P.Jangra vs. State Information Commission, Haryana and others **(2011-2) PLR 40** and M/s Hindustan Petroleum Corporation Ltd. v. The Central Information Commission and others **(2011-2) P.L.R.101**. Therefore, the contrary arguments of learned counsel for petitioner-institutions "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances as the law laid down in the aforesaid judgments "mutatis mutandis" is fully attracted in the instant cases and is the complete answer to the problem in hand.

86. There is another aspect of the matter, which can be viewed from a different angle. As is evident that the SIC have scrutinized the material on records in the right perspective and recorded the finding of facts based on material on records that the petitioner-institutions are controlled and have been substantially financed by the funds provided directly or indirectly by the State Governments and are liable to impart the informations to the complainants. Meaning thereby, the SIC have recorded the valid reasons in the impugned orders. Such orders containing the valid reasons cannot legally be set aside in exercise of the writ jurisdiction of this

Court, unless the same are perverse and without jurisdiction. As no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner-institutions, therefore, the impugned orders are hereby maintained in the obtaining circumstances of the case.

87. For the reasons depicted hereinabove it is hereby held that, inter-alia, if the epitome of the facts (i) that the petitioner-Institutions cannot come into existence and function unless registered and regulated by the provisions; (ii) the control of the State Government over them, through the medium of the provisions of the indicated Acts/Rules, (iii) substantially financed by the funds provided directly or indirectly by the appropriate Government, (iv) the mandate and command of the provisions of the RTI Act; (v) their public dealing, (vi) preamble, aims, objects and regime of this Act, (vii) the larger public interest and totality of the other facts and circumstances emanating from the records, as described hereinabove, are put together, then, to my mind, the conclusion is inevitable and inescapable that the petitioner-institutions squarely fall within the ambit and scope of definition of public authorities and are legally required to impart the indicated informations to the complainants as envisaged under the RTI Act. If the contrary arguments of learned counsel for the petitioner-Institutions are accepted, then to me, it will nullify the aims and objects of the RTI Act, perpetuating and inculcating the injustice to the larger public interest in general and to the complainants in particular in this context.

88. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

89. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petitions are hereby dismissed as such with costs.

May 9,2011 (**M**ehinder **S**ingh **S**ullar)
AS Judge

Whether to be referred to reporter?Yes/No